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CONGRESSIONAL RECORD — SENATE

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AMENDMENT NO. 2350

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from West Virginia.

Mr. PERCY. Mr. President, the amendment by the Senator from West Virginia to the War Powers Resolution of 1973 would conform the procedures under that statute to the holding of the Supreme Court in the *Chadha* case last summer. It would change the congressional veto procedure in section 5(c) of the War Powers Resolution from a concurrent resolution to a joint resolution and would conform the priority procedures of section 7 of War Powers accordingly.

Mr. President, it has been the intention of the Committee on Foreign Relations to conduct a hearing on this issue, among others, on September 29. That hearing was overtaken by our need to consider the resolution relating to Lebanon under the War Powers Act during that same week. It was our intention to reschedule that hearing either later this year, or early next year.

We may still wish to hold such a hearing to discuss a number of pending proposals for changes in the War Powers Resolution, but this is one change in that resolution which, as the majority leader has already stated today, would command nearly unanimous support in the Congress. I strongly support the amendment of the Senator from West Virginia, and urge my colleagues to do likewise. As he has said, we should not leave in limbo the question of how Congress should proceed if it should decide to oppose any particular involvement of U.S. Armed Forces in hostilities abroad. We should make clear how such a legislative directive would be considered and assure that it would be covered by the expedited procedures appropriate to such a grave exercise of our responsibility under the Constitution.

Mr. President, I am aware that there are some commentators and experts—including the distinguished former Senator from New York, Senator Javits, whom I have consulted on this question—who believe that the reasoning of the Supreme Court in the *Chadha* decision does not reach the War Powers Resolution. They would argue, therefore, that there is still life in the concurrent resolution veto procedure presently contained in the War Powers Resolution, or in other words, that section 5(c) containing that procedure was not struck down by decision in June.

Mr. President, there may be some merit to this argument as a matter of constitutional law, that the war powers area is distinguishable from other areas of the Constitution. I took that position and I was joined in that position by my distinguished colleague (Mr. PELL), the ranking minority member of the Committee on Foreign Relations.

In my view, the practical impact of the Supreme Court decision is to remove the value of that provision of the War Powers Act. The uncertainty which would surround any attempt to exercise that provision of the act, and the strong likelihood that the Supreme Court would extend its holding to include the war powers area also, deprive that procedure of any realistic political strength. Furthermore, Mr. President, I know that there are grave doubts on the part of many Members of the Congress, including myself, about both the wisdom and the constitutionality of this provision. Under most circumstances, it should require an extraordinary majority of the Congress to direct the termination of an ongoing military operation, particularly where it has already been previously authorized under the other procedures of the War Powers Act. That is essentially the position we adopted in section 7 of the recent joint resolution 159 on Lebanon, and I think it is appropriate to amend the War Powers Resolution in this fashion.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WILSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask unanimous consent that the pending Byrd amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. There are one or two amendments that will be offered by the distinguished Senator from Wisconsin which I believe are noncontroversial and which can be accepted by both sides.

Mr. PROXMIRE. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee.

AMENDMENT NO. 2369

(Purchase: To deny eligibility for appointment to, or employment by, the National Endowment for Democracy to individuals who have engaged in intelligence activities)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes an amendment numbered 2369.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert a new section as follows:

No individual may be eligible for appointment as an officer of the National Endowment for Democracy, and no individual may be eligible for employment by the Endowment, if such individual has engaged in any intelligence activity since 1963.

Mr. PROXMIRE. Mr. President, this amendment is designed for a single purpose. That purpose is to protect the National Endowment for Democracy from unwarranted attack abroad as being an agent of the U.S. intelligence community. If the goals and programs of the Endowment are to be effective internationally, this organization must be free from Soviet propaganda which would picture it as an arm of the CIA or some other Western intelligence organization. Such protection can be provided by legislating that officers and employees of the Endowment be free of any intelligence community relationship for the past 20 years.

We all know that the Soviet Union has a vigorous propaganda organization around the globe. One of their common tools is the charge that some U.S. organization really is a front for the CIA. Now it is impossible to control what the KGB says or does abroad. But we can dilute their effectiveness in making false charges by mandating in our law that the Endowment be free of any intelligence connection.

This has been an effective barrier to false charges for our Peace Corps. The world knows that the Peace Corps is prohibited from recruiting individuals with intelligence backgrounds. Prohibitions are contained in detailed language in Peace Corps literature and regulations. This has given the Peace Corps enormous protection from disruptive claims of intelligence relationships.

We should provide the same protection for the endowment which will be operating abroad under similar circumstances and which will be open to the same propaganda attacks.

My amendment prohibits employment by the endowment, including its officers, to any individual who has engaged in any intelligence activity in the past 20 years. By intelligence activity I mean employment by or close association with any U.S. intelligence organization either here in the United States or abroad. I interpret this language to be broad, inclusive, and without qualification—the purpose being to provide a blanket prohibition rather than to allow specific loopholes.

We cannot stop false charges but we can create the climate in the world for making these charges unbelievable. That would take a great advantage away from our adversaries who will be out to discredit the endowment.

I understand that the managers of the bill are familiar with the amendment and have no objection to it.

The PRESIDING OFFICER. Is there objection?

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Mr. PERCY. Mr. President, I know of no objection on this side of the aisle.

Mr. PELL. There is no objection on this side.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2369) was agreed to.

Mr. PROXMIRE. Mr. President, I have one other amendment that I would like to introduce, and then I will be happy to yield to the Senator from Arizona.

Mr. PERCY. Did the distinguished Senator wish to comment on the previous amendment?

Mr. GOLDWATER. Mr. President, I wanted to make an inquiry. Are we still on the Byrd amendment?

Mr. PERCY. We temporarily laid the Byrd amendment aside inasmuch as we completed debate with the Senators present, but it can be brought back. We temporarily laid it aside so that we could take up two or three noncontroversial amendments and then return to the Byrd amendment.

Mr. GOLDWATER. I have a few words to say about the Byrd amendment when my time comes, if I might be allowed to do that.

Mr. PERCY. That would be fine, as soon as we finish the amendment of the Senator from Wisconsin.

The PRESIDING OFFICER. The Chair notes that there is an order for a vote at 11:30 on the Byrd amendment.

Mr. PROXMIRE. Mr. President, it is my understanding that the Byrd amendment has been temporarily laid aside for the purpose of offering one other amendment.

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 2310

(Purpose: To prohibit certain assistance to the Khmer Rouge)

Mr. PROXMIRE. Mr. President, I send a second amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes an amendment numbered 2310.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the bottom of page 48, add the following:

TITLE VII—GENERAL PROVISIONS
PROHIBITION ON CERTAIN ASSISTANCE TO THE
KHMER ROUGE IN KAMPUCHEA

SEC. 701. (a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or any other Act may be obligated or expended for

the purpose, or with the effect, of promoting, sustaining or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Kampuchea or elsewhere in Indochina.

(b)(1) All funds appropriated before the date of enactment of this section which were obligated but not expended for activities having the purpose or effect described in subsection (a) shall be deobligated.

(2) All funds deobligated pursuant to paragraph (1) shall be deposited in the Treasury of the United States as miscellaneous receipts.

Mr. PROXMIRE. Mr. President, this amendment would bar all U.S. military assistance directly or indirectly to the Cambodian Khmer Rouge—a political-military faction who in the late 1970's pursued the most reprehensible persecution and destruction of a cultural group since the Nazi Holocaust.

The Khmer Rouge, led by Pol Pot, is currently opposing the Vietnamese invasion of Cambodia and their subsequent installation of a puppet government there. A recent Newsweek magazine article alleged that the CIA is helping China to supply the Khmer Rouge force with arms. As a matter of policy, CIA spokesmen will neither confirm nor deny this charge. This Senator has no independent knowledge of the accuracy of the Newsweek charge. But given Pol Pot's past record, it is clearly improper for the United States to support any activities of the Khmer Rouge. Therefore, this amendment would require that any possibly existing support cease, and that no further support be established.

Cambodia, now known as Kampuchea, was ruled for nearly 30 years by Prince Norodom Sihanouk, who tried to keep the Vietnam war outside of his own borders. He was only partially successful. In early 1970, he was deposed by Army Marshal Lon Nol. An ardent anti-Communist, Lon Nol strayed considerably from Sihanouk's neutral posture. The Communist movement known as the Khmer Rouge slowly began to gain strength in opposition to the military government. Then the United States invaded Cambodia. We hoped to help our own cause in Vietnam by cutting off the flow of arms from Communist North Vietnam to the Vietcong rebels in South Vietnam through Cambodia.

Despite the U.S. intention that the invasion was only to protect its own interests in Vietnam and thus not an attempt to embroil Cambodia in the Vietnam conflict, Cambodians viewed it in a negative light. Though he denied it, Lon Nol's tacit support for the invasion further entrenched him in the U.S. camp. The development of the Khmer Rouge opposition accelerated. Pol Pot, leader of the Khmer Rouge, gained considerable strength in both manpower and firepower. By 1975, the United States removed its troops from Southeast Asia. Shortly thereafter, the Lon Nol government was toppled and Pol Pot assumed the reigns of power in Phnom Penh.

The newly established Communist government then began its own brand of reform. What the world witnessed was nothing short of a holocaust.

The record of the Khmer Rouge's 4-year reign of terror is well documented and widely known. I wish to recall briefly a few details of that record. Following their April 1975 take over, the Khmer Rouge troops immediately forced the evacuation of Cambodia's cities, including Phnom Penh with its 2 million residents. Tens of thousands of people, especially the sick and the elderly, died in forced marches. The Khmer Rouge then systematically executed various segments of the population: former national civilian and military officials; lower ranking local government and military personnel; merchants and the educated; teachers, students, and many workers; ethnic and religious minorities. Few groups were left untouched. Many were simply killed; many others died under torture.

At some locations hundreds of individuals were exterminated daily, and mass graves containing the remains of thousands have been discovered. Horror stories abound. Some of the killings seem to make little sense at all. An example:

The story of Tak Mok's guesthouse is a case in point. It is told and retold by everyone from people who work there to the provincial governor. The stately, three-story building, now a government hotel, stands on a small island in a pleasant lake in this provincial capital 50 miles south of Phnom Penh.

Once there was a Buddhist pagoda on the site, but Tak Mok, the local Khmer Rouge commander, had it torn down in 1976 and ordered the guesthouse built. When the first floor was finished, the workers who built it were put to death and their bodies thrown in the lake.

Another crew was brought in and, eventually, those workers too were killed. In all, people here say, 30 to 40 workers died—for what reason, no one seems to know.

We should note, as a postscript to this story, that Tak Mok is still alive and well and chief-of-staff of the Khmer Rouge rebel forces.

Another anecdote of atrocity:

Many children were separated from their families as the Khmer Rouge took them away to work in "mobile teams" far away from their homes. They lived in groups of up to 100 other children and worked "incredibly long hours" said the social worker, who did not want to be named.

"They were forced to dig ditches, build roads and plow fields," she said. Often they were beaten to make them work harder or as punishment for minor offenses. Many died.

These are children we are talking about. Many were orphaned and alone. They were innocent victims of the Khmer Rouge terror, and even if they survived it, the scars would remain forever.

In all, an estimated 1 million Cambodians were systematically executed by the Khmer Rouge under Pol Pot, and approximately 1 million more died of exposure, disease, malnutrition, and

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forced labor. Almost one-third of the Cambodian population was wiped out in a brief 4-year span. Pol Pot's reign witnessed atrocities of a scope unexceeded in modern history, save by Hitler's anti-Semitic Holocaust.

Pol Pot's rule spanned the late 1970's. He soon fell out of favor with his Vietnamese Communist neighbors, as well as the Soviet Union, eventually turning toward the Chinese for support. In the name of its own security and its own proclaimed perceptions of the terror fomented by the Khmer Rouge, the Vietnamese invaded Cambodia and deposed Pol Pot and his regime. They proceeded to install their chosen puppet replacement, Heng Samrin, a former colleague of Pol Pot. Thus, in 1979, the Khmer Rouge was out of power, while the Vietnamese were running Cambodia through Samrin.

With Heng Samrin and his Vietnamese sponsors controlling the Government of Cambodia, several rebel factions joined forces and formed an alliance to depose them and return control of Cambodia to the Cambodians. There are three major parties to this confederation; Prince Sihanouk and his neutralist followers; Son Sann and his ardent anti-Communist supporters; and, the remnants of Pol Pot's Khmer Rouge, run by Pol Pot himself and his remaining colleagues. Clearly, these groups are incompatible. They share a common goal—displacement of the Vietnamese—but how they would or could share power is unclear. At present, they remain politically and militarily distinct. The Pol Pot forces have the strongest military capability.

Our sympathy for the Cambodian tragedy might lead us to desire a more active role in this turbulent region. It is unfortunate that the Cambodian people have found their nation occupied and essentially ruled by a foreign power. They have indeed lost their self-determination. Their countryside, once ravaged by a civil war, has been ravaged again by an invading nation. Millions died under Pol Pot and many more are dying under the Vietnamese. Desperate war-weary Cambodians flee the Vietnamese-controlled sectors and stream into refugee camps across the Thai border. The ouster of Pol Pot by the Vietnamese clearly did not bring an end to the suffering.

Which faction should we support in Vietnam? Should a united rebel force regain power, how will power be shared among the competing factions? Would not the Pol Pot forces dominate and ruthlessly remove the others? Is it not dangerous to support Pol Pot in any way?

There may be a group or groups in Cambodia that are worthy of our support, either economically or morally. But, I know one group we should not support under any circumstances—the Khmer Rouge. They claim that they have changed for the better, that the ruthlessness is over. We have no way of knowing this; and, even if they have

indeed changed, they deserve no leadership role in Cambodia. They have wrought enough havoc already. They are mass murderers. They have committed genocide against their own people—killing nearly a third of them. They are ruthless and inhumane. We have a moral obligation to the world and to ourselves not to support the re-instatement of such a ruling class regardless of our opposition to the present Vietnamese-sponsored government and despite the United Nation's persistent recognition of Pol Pot. Even if we wish to aid others in the rebel alliance, we must give the Khmer Rouge nothing. Aiding them directly or, indirectly will only increase their strength within the resistance and make it easier for them to reassert total authority and subjugate the other resistance partners to their wishes. A dialog between the contending factions might provide the basis for an appropriate resolution of the Cambodian quagmire and the suffering that is its product; but, the Khmer Rouge must not be the centerpiece of such a dialog. We may not like the 180,000 Vietnamese troops in Cambodia, but Pol Pot is not an acceptable alternative.

Mr. President, the Khmer Rouge must never again threaten the Cambodian people. And the United States must never support the Khmer Rouge—directly, indirectly, or in any other form.

Mr. President, we have discussed this amendment with the staffs of the managers of the bill, and I am hopeful that they can accept it.

The PRESIDING OFFICER. Is there objection?

Mr. PERCY. Mr. President, I know of no objection on this side.

Mr. PELL. Nor is there any objection, to the best of my knowledge, on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2310) was agreed to.

Mr. PROXMIER. Mr. President, I once again thank the managers so much for the adoption of the amendment.

The PRESIDING OFFICER. The question now recurs upon the Byrd amendment.

Mr. PERCY. Mr. President, we now return to the Byrd amendment, and I understand that the Senator from Arizona will seek recognition.

Mr. GOLDWATER, addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Is there a time limit on this amendment, might I inquire of the floor leader?

The PRESIDING OFFICER. There is a vote ordered for 11:30.

Mr. GOLDWATER. The vote will be at 11:30?

The PRESIDING OFFICER. That is correct.

Mr. GOLDWATER. Mr. President, I rise in opposition to the amendment. Just as I very vehemently opposed the War Powers Act when it was originally passed. It is unconstitutional. I do not think there is any question of it. Very, very few scholars uphold the idea that it is constitutional, and the Byrd amendment in my opinion is also unconstitutional. Congress does not have the authority to dictate the removal of troops, whether it be by a bill or a joint resolution or a concurrent resolution.

Mr. President, article II, section 2 of the Constitution makes the President "Commander in Chief" and also section 1 of article II gives all the executive power to the President. These provisions enable him to make the determination of war. I emphasize that because I hear so often on the floor of this Chamber and read so often in the CONGRESSIONAL RECORD the statement that Congress has the right to declare war. We do have the right to declare war. We can stand up and declare war every 5 minutes, 24 hours a day, and we cannot send one man to war anywhere in this world. Witness that in the course of the 204- or 205-odd years of our history the President has seen it necessary to call out the troops about 202 times. Now, these were not all for war purposes; they were for purposes of keeping peace here and there, but in all of these times of calling out the troops the Congress has declared war five times, and two of those were in the same war.

Now, I would hope some day to be able to have hearings held on legislation which I am preparing that would repeal the War Powers Act. I think a much better approach to it, if it is the desire of the Congress to have the power to go to war, would be to pass something like the War Powers Act as a constitutional amendment and send it out to the States so the sovereign American people can consider the issue, and, if 38 States ratify it, then it is the people who will decide to take from the President his vested authority to be Commander in Chief and make the determination on covert action or upon war. In fact, there is a vote going to take place in the House sometime today that will decide whether or not this country can engage in covert action, and I might remind my friends in the House that if they vote for this, the only alternative they have is to go to war.

The history of the Congress in the field of war is so miserable that we should not make any further effort to get into it.

Let me briefly recite the history at the end of the Revolutionary War with Great Britain. Members of the Continental Congress were going out in the field making tactical decisions, making promotions here, there, and everywhere, and we nearly lost the war because of the intervention of that Congress. I really believe that

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